

TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.: 76/540,341
For the Mark: KUSTOMWERKS
Filed: August 14, 2003
Publication: July 27, 2004

D. S. MANUFACTURING, INC.

Opposition No. _____

Opposer,

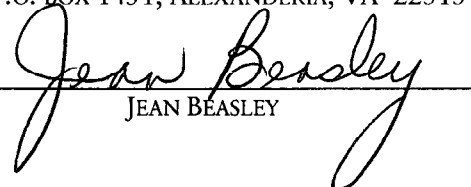
v.

KUSTOMWERKS, INC.

Applicant.

Box TTAB
FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

I CERTIFY THAT, ON NOVEMBER 22, 2004, THIS
PAPER IS BEING DEPOSITED WITH THE U.S. POSTAL
SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE
ADDRESSED TO THE COMMISSIONER FOR
TRADEMARKS, TRADEMARK TRIAL AND APPEAL
BOARD, P.O. BOX 1451, ALEXANDRIA, VA 22313-
1451.



JEAN BEASLEY

TRANSMITTAL LETTER

Enclosed for filing are the following papers in connection with the above-identified trademark opposition:

- Notice of Opposition (in duplicate);
- Credit Card payment form in the amount of \$300; and
- Postcard.

A self-addressed return postcard in accordance with T.M.E.P. Section 703 itemizing all of the above-referenced documents filed with the United States



11-24-2004

Patent and Trademark Office.

Respectfully Submitted,
D.S. MANUFACTURING, INC.

By: Eunice P. de Carvalho

Eunice P. de Carvalho
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Tel.: (612) 766-7064
Fax: (612) 766-1600

Dated: November 22, 2004

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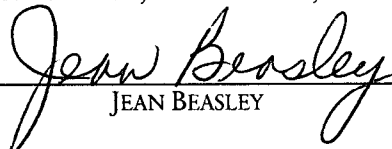
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JEAN BEASLEY

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Opposer D. S. Manufacturing, Inc. ("Opposer") is a Minnesota corporation having its principal place of business at 795 Tower Drive, Hamel, MN 55340.

Opposer believes that it will be damaged by the registration of the mark in Trademark

Application Serial No. 76/540341, and hereby opposes the same.

12/07/2004 TMCCANTS 00000049 060029 76540341

01 FC:6402 300.00 DA

As grounds of this opposition, it is alleged that:

1. Opposer, through its own use, has since at least as early as 1990 continuously used, and is today using, the mark KHROME WERKS in connection with motorcycle parts and accessories.

2. Opposer is the registered owner of U.S. Registration No. 2,104,504 for the mark KHROME WERKS (Stylized) for use in connection with motorcycle parts and accessories, namely, "heat shields handlebars, engine guards, light visors, fenders, fender extensions, chrome trim rails, luggage racks, chrome trailer hitches, mudflaps, license frames, sissy bars, backrests and soft saddlebag supports; and exhausts, drag pipes, mufflers, muffler supports and baffles."

3. Opposer is the applicant for the registration of the mark KHROME WERKS at Ser. No. 76/550,806 for use with "motorcycle parts and accessories, namely, exhausts, drag pipes, mufflers, muffler supports and baffles; heat shields, handlebars, engine guards, light visors, fenders, fender extensions, chrome trim rails, luggage racks, chrome trailer hitches, mudflaps, license frames, sissy bars, backrests and armrests and soft saddlebag supports."

4. By virtue of Opposer's continuous use and promotion of the KHROME WERKS mark, the mark has become known in the trade and goodwill and public recognition have been built up in the KHROME WERKS mark.

5. Upon information and belief, Applicant Kustomwerks, Inc. ("Applicant") is a North Carolina corporation with an address at 488-A Gallimore Dairy Road, Greensboro, NC 27409.

6. Upon information and belief, on or about August 14, 2003, Applicant filed a use-based application, Serial No. 76/540341, to register the mark KUSTOMWERKS (the "KUSTOMWERKS Application"). As published, the KUSTOMWERKS Application seeks registration in connection with "motorcycle parts; namely, insets and exhausts, frames, kickstands, front ends, gas tanks, dash boards and instruments, oil tanks, fenders, engines, clutches, transmissions, drive lines, handlebars and controls, brakes, forward controls, footpegs, hubs, axles, wheels, license plate mounts made of metal and horns."

7. Opposer's actual, continuous and continuing use of the KHROME WERKS marks since at least as early as April 23, 1990, prior to the filing of the KUSTOMWERKS Application on August 14, 2003.

8. The KUSTOMWERKS mark so resembles Opposer's KHROME WERKS trademark as to be likely, when used in connection with the goods identified in the KUSTOMWERKS Application, as to cause confusion, to cause mistake, and/or to deceive.

9. Upon information and belief, the mark in the KUSTOMWERKS Application cannot be registered consistent with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's alleged KUSTOMWERKS mark, and prays that application Serial No. 76/540,341 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

A duplicate of this Notice of Opposition is being filed herewith, together with a filing fee of \$300. If the amount submitted herewith is determined to be incorrect, the

Commissioner may charge any additional fees or to credit any over payment to Deposit

Account No. 06-0029.

Please address all correspondence to:

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Minneapolis, MN 55402
Phone: (612) 766-7064
Fax: (612) 766-1600

Dated: November 22, 2004

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**Attorneys for Opposer
D.S. Manufacturing, Inc.**

M2:20670723.01